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CITATIONS

719616—46

In the Supreme Court of the United States

OCTOBER TERM, 1946

No. 557

THOMAS W. LAMONT, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the Tax Court (R. 27–36) is reported in 3 T. C. 1217. The opinion of the circuit court of appeals (R. 41–49) is reported in 156 F. 2d 800.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on July 8, 1946 (R. 50). The petition for a writ of certiorari was filed on September 30, 1946. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether, under the Revenue Act of 1936, a member of a partnership is entitled to apply as an offset to his individual capital gains, his distributive share of the capital losses of the partnership which, by reason of the limitation of Section 117 (d), are not allowable to the partnership in the computation of its net income.

STATUTES AND REGULATIONS INVOLVED

The statutes and regulations involved are set forth in the Appendix, *infra*, pp. 11–24.

STATEMENT

The facts were found by the Tax Court as stipulated (R. 27). During 1937, taxpayer was a member of the partnership doing business in New York under the name of J. P. Morgan & Company and doing business in Philadelphia under the name of Drexel & Company. Taxpayer's distributive share or interest in the partnership was 9.980335 percent. His share of the ordinary net taxable income of the partnership for the year 1937 amounted to \$65,076.18. The partnership had sustained a capital loss on the sale of capital assets in the amount of \$1,825,885.40, after giving effect to the provisions of Section 117 (a) of the Revenue Act of 1936, Appendix, *infra*, p. 13. To the extent of \$2,000, this capital loss was reflected in computing the net income of the partnership. (R. 27.) Taxpayer's pro rata

share of the capital loss of the partnership not allowed as a deduction, in computing partnership net income, amounted to approximately $182,000. Taxpayer was likewise a member of syndicates, which have been held to be partnerships, and which also sustained capital losses in excess of $2,000, though comparatively much smaller in amount than those sustained by J. P. Morgan & Company. (R. 27–28.)

On the other hand, during 1937, taxpayer individually realized capital gains of $131,441.72 and sustained individual capital losses of $76,-191.76, after giving effect to the provisions of Section 117 (a) of the Revenue Act of 1936, thus leaving a balance of $55,249.96 individual capital gains in excess of individual capital losses (R. 28). The sole issue here is whether, under the Revenue Act of 1936, taxpayer is entitled to offset against this balance of individual capital gains in the amount of $55,249.96, his distributive share of capital losses of the partnerships which were not allowable in computing the partnership net income by reason of the limitation of Section 117 (d) of the Revenue Act of 1936. All other issues were disposed of in the Tax Court by concession or abandonment. (R. 29.)

The Commissioner disallowed this claimed offset and determined a deficiency (R. 27); the Tax Court ruled in taxpayer's favor and ordered a refund for overpayment (R. 36). The court below, on the Commissioner's petition for review,

held that the statute requires the tax as claimed by the Commissioner (R. 49), and reversed the decision of the Tax Court (R. 50). Judge Chase concurred in the result (R. 49).

ARGUMENT

1. The provisions of the 1936 Act here applicable were not contained in the Revenue Act of 1938 or in any subsequent Act. See Sections 182 and 183 of the Revenue Act of 1938, Appendix, *infra,* pp. 16–17, and Sections 182 and 183 of the Internal Revenue Code, 26 U. S. C. 182–183, as amended 26 U. S. C. (Supp. V) 182–183. Hence, the question here relates strictly to a statute which has now been repealed approximately eight years. So far as we can discover, only three cases involving the present question are pending in addition to the instant case and all three are in the same circuit as the instant case.[1] Further cases would appear to be barred by the statute of limitations and hence, settlement of the question by this Court is not requisite in the public interest.

2. The language of the pertinent statutes and regulations, the legislative history, and the his-

[1] *Commissioner* v. *Estate of Morgan*, decided by the Tax Court on October 30, 1944 (1944 P–H T. C. Memorandum Decisions, par. 44,352), pending on appeal by the Commissioner to the court below; *William B. Steinhardt, Ada K. Steinhardt and Milton Steinhardt* v. *United States;* and *Amsick Sonne and Co.* v. *United States;* both pending in the District Court for the Southern District of New York.

tory of the times, plainly establish that continuously from 1933 to 1938, with the disclosures before the Senate Banking and Currency Committee specifically in mind (R. 45–46), Congress intended to deny the use of the partnership provisions of the Revenue Acts to large banking and security partnerships as an avenue of escape from the income tax through charging capital losses against members' capital gains. Congress carefully implemented this purpose in the statute, and its committees, in written report and by statement of committee members in debate, were circumspect in explaining how this was accomplished. Indeed, this Court, as explained and followed in the opinion below (R. 44–45), has already authoritatively interpreted the relevant legislative history. Thus, in *Neuberger* v. *Commissioner,* 311 U. S. 83, it held (pp. 89–90) that:

> In 1933 Congress amended § 182 (a) of the Revenue Act of 1932 to deny to individual partners deductions for partnership losses which had been disallowed in the partnership return, the converse of the instant case. 48 Stat. 195, 209. More significantly, in 1938, after the Treasury Department had ruled to the contrary, G. C. M. 14012, XIV–1 Cum. Bull. 145; I. T. 2892, XIV–1 Cum. Bull. 148, Congress expressly provided for the deduction of individual security losses from similar partnership gains. Revenue Act of 1938, §§ 182–183; 52 Stat. 447, 521. That the amendment of

> 1933 changed and the Revenue Act of 1938 restored the law of 1932 as we have explained it is plain from the legislative history of the two Acts and of § 23 (r) (1).

The opinion below, with sufficient detail for the present purpose, sets forth the course of this legislative history (R. 42–49). From this it is plain that during the period in which the 1934 and 1936 Acts were in effect, Congress never receded from the policy originally expressed in the amendment to Section 182 of the Revenue Act of 1932 made by Section 218 (d) of the National Industrial Recovery Act (see Appendix, *infra,* pp. 12–13), denying to individual partners deductions for partnership losses which had been disallowed in the partnership return.

Interpretations, both contemporaneous to the passage of the 1934 Act and subsequent, support the construction, for which the Commissioner here contends, without dissent until recent rulings of the Tax Court (R. 45).[2] Taxpayer's construction of the *Neuberger* case, which allowed a deduction camparable to that here claimed, constitutes substantially his sole reliance; indeed, he originally paid the tax and only filed claim for refund, based

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[2] Tyler & Ohl, *The Revenue Act of 1934* (1935), 83 U. of Pa. L. Rev. 607, 630–631; 6 Mertens, *Law of Federal Income Taxation*, Sec. 35.16, pp. 117–118. The reasoning in *Wadel* v. *Commissioner*, 44 B. T. A. 1042, supports the Commissioner's contention here, while that in *Goodbody* v. *Commissioner*, 2 T. C. 700, 701, seems to support taxpayer's contention, although distinguishing the instant factual situation.

upon that decision, after its announcement in 1940 (R. 15, 44). However, taxpayer, while leaning heavily on the holding in the *Neuberger* case, which is here immaterial, since that case involved the 1932 Act, chooses to reject the construction there of the statute controlling here (Pet. 10–11). That construction was not *dictum,* as the necessities of taxpayer's argument compel him to urge (Br. 18–19, R. 44). The express purpose of Congress to change, in 1933, the existing 1932 law and not restore the 1932 law until 1938, "plain from the legislative history" (*Neuberger* case, 311 U. S. at 90), was a holding relevant to, and directly "confirmed", the decision of this Court in its determination of "the proper construction" of Section 23 (r) (1) of the 1932 Act, 311 U. S. at 89.[3]

Again, taxpayer's contention (Pet. 7–9) that the decision below conflicts with *Jennings* v. *Com-*

[3] This holding of this Court constitutes authority for the position of the Government in the instant case and disposes of any alleged inconsistency between its present argument and that advanced, so far as the 1934 and 1936 Acts are concerned, in its brief in the *Neuberger case*, to which taxpayer here makes allusion (Pet. 10–11). Besides, it may be noted that the taxpayer's brief in the *Neuberger* case urged that (p. 33):

> "Those Acts [1934 and 1936] had continued the policy first adopted in Section 218 (d) of the National Industrial Recovery Act of disallowing to partners the deduction of partnership security losses. The 1938 Act restored to partners the privilege of deducting partnership security losses."

This argument prevailed, as the Court's opinion establishes, and is followed by the Government here.

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missioner, 110 F. 2d 945 (C. C. A. 5th), certiorari denied, 311 U. S. 704, adds nothing since it amounts, in essence, only to a repetition of taxpayer's construction of the *Neuberger* decision (R. 45, note 3). Though arising under the 1936 Act, the *Jennings* case construed a section of limited applicability, lacking the legislative history or statutory basis of the provisions here involved.[4]

3. The court below correctly held that the decision of the Tax Court presented a clear-cut question of law within its power of review (R. 42). The question of law here is unembarrassed by any disputed question of fact or any necessity to draw inferences of fact from the basic findings; the rule announced is a legal proposition of general applicability as to the right of offsets under the statute of an individual partner's distributive share of the capital losses of the partnership against his individual capital gains.[5] As in *Trust of Bingham* v. *Commissioner,* 325 U. S. 365, 370,

[4] Sec. 23:

* * * * *

(g) *Wagering Losses.*—Losses from wagering transactions shall be allowed only to the extent of the gains from such transactions.

[5] The *Neuberger* case itself affords authority for the Commissioner's contention that a similar issue decided by the Tax Court (though under a different statute) presents a question subject to review by the appellate courts, since this court there reversed the decision of the court below, affirming that of the Board of Tax Appeals. See 311 U. S. at 84.

the answer depends upon the language of the statute and its purpose as disclosed by its statutory setting and legislative history. Since the decision in *Dobson* v. *Commissioner,* 320 U. S. 489, rehearing denied, 321 U. S. 231, this Court has reexamined, as matters of law, determinations by the Tax Court of the meaning of the words of the statute as applied to facts found by that court. *Trust of Bingham* v. *Commissioner,* 325 U. S. at 371, note 1; *Commissioner* v. *Wilcox,* 327 U. S. 404.

Moreover, the Tax Court did not decide the case as it did wholly as a result of an independent exercise of its own judgment, but in part because it mistakenly thought its result to be required, as a matter of law, by the decision of this Court in the *Neuberger* case (R. 32, 36). Hence, the instant record presented the additional reviewable question as to whether the Tax Court was correct in holding that the *Neuberger* case compelled its decision. *Commissioner* v. *Heininger,* 320 U. S. 467, 475; *Commissioner* v. *United States Trust Co.,* 143 F. 2d 243 (C. C. A. 2d), certiorari denied, 323 U. S. 727.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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Acting Solicitor General.

Sewall Key,
Acting Assistant Attorney General.

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I. Henry Kutz,
Special Assistants to the Attorney General.

October 1946.

APPENDIX

Revenue Act of 1932, c. 209, 47 Stat. 169:

SEC. 23. DEDUCTIONS FROM GROSS INCOME.

* * * * *

(r) *Limitation on stock losses.*—

(1) Losses from sales or exchanges of stocks and bonds (as defined in subsection (t) of this section) which are not capital assets (as defined in section 101) shall be allowed only to the extent of the gains from such sales or exchanges * * *.

* * * * *

SEC. 101. CAPITAL NET GAINS AND LOSSES.

(a) *Tax in case of capital net gain.*—In the case of any taxpayer, other than a corporation, who for any taxable years derives a capital net gain (as hereinafter defined in this section), there shall, at the election of the taxpayer, be levied, collected, and paid, in lieu of all other taxes imposed by this title, a tax determined as follows: A partial tax shall first be computed upon the basis of the ordinary net income at the rates and in the manner as if this section had not been enacted and the total tax shall be this amount plus 12½ per centum of the capital net gain.

(b) *Tax in case of capital net loss.*—In the case of any taxpayer, other than a corporation, who for any taxable year sustains a capital net loss (as hereinafter defined in this section), there shall be levied, collected, and paid, in lieu of all other taxes imposed by this title, a tax determined as follows: a partial tax shall first be computed upon the basis of the ordinary

net income at the rates and in the manner as if this section had not been enacted, and the total tax shall be this amount minus $12\frac{1}{2}$ per centum of the capital net loss; but in no case shall the tax of a taxpayer who has sustained a capital net loss be less than the tax computed without regard to the provisions of this section.

(c) *Definitions.* * * *

* * * * *

(8) "Capital assets" means property held by the taxpayer for more than two years (whether or not connected with his trade or business), but does not include stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale in the course of his trade or business.

* * * * *

SEC. 186. CAPITAL NET GAINS AND LOSSES.

In the case of the members of a partnership the proper part of each share of the net income which consists, respectively, of ordinary net income, capital net gain, or capital net loss, shall be determined under the rules and regulations to be prescribed by the Commissioner with the approval of the Secretary, and shall be separately shown in the return of the partnership and shall be taxed to the member as provided in this Supplement, but at the rates and in the manner provided in section 101 (a) and (b), relating to capital net gains and losses.

National Industrial Recovery Act, c. 90, 48 Stat. 195:

SEC. 218. * * *

* * * * *

(d) Effective as of January 1, 1933, section 182 (a) of the Revenue Act of 1932

is amended by inserting at the end thereof a new sentence as follows: "No part of any loss disallowed to a partnership as a deduction by section 23 (r) shall be allowed as a deduction to a member of such partnership in computing net income."

Revenue Act of 1934, c. 277, 48 Stat. 680, Sections 117 (a) (b) and (d), 181, 182, and 183 are identical with the corresponding sections of the Revenue Act of 1936, c. 690, 49 Stat. 1648.

Revenue Act of 1936, c. 690, 49 Stat. 1648:

SEC. 117. CAPITAL GAINS AND LOSSES.

(a) *General Rule.*—In the case of a taxpayer, other than a corporation, only the following percentages of the gain or loss recognized upon the sale or exchange of a capital asset shall be taken into account in computing net income:

100 per centum if the capital asset has been held for not more than 1 year;

80 per centum if the capital asset has been held for more than 1 year but not for more than 2 years;

60 per centum if the capital asset has been held for more than 2 years but not for more than 5 years;

40 per centum if the capital asset has been held for more than 5 years but not for more than 10 years;

30 per centum if the capital asset has been held for more than 10 years.

(b) *Definition of Capital Assets.*—For the purposes of this title, "capital assets" means property held by the taxpayer (whether or not connected with his trade or business), but does not include stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand

at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business.

* * * * *

(d) *Limitation on Capital Losses.*—Losses from sales or exchanges of capital assets shall be allowed only to the extent of $2,000 plus the gains from such sales or exchanges. * * *

* * * * *

Supplement F—Partnerships

Sec. 181. Partnership not taxable.

Individuals carrying on business in partnership shall be liable for income tax only in their individual capacity.

Sec. 182. Tax of partners.

There shall be included in computing the net income of each partner his distributive share, whether distributed or not, of the net income of the partnership for the taxable year.

Sec. 183. Computation of partnership income.

The net income of the partnership shall be computed in the same manner and on the same basis as in the case of an individual.

Sec. 184. Credits against net income.

The partner shall, for the purpose of the normal tax, be allowed as a credit against his net income, in addition to the credits allowed to him under section 25, his proportionate share of such amounts (not in excess of the net income of the partnership) of interest specified in section 25 (a) as are received by the partnership.

Sec. 185. Earned income.

In the case of the members of a partnership the proper part of each share of the

net income which consists of earned income shall be determined under rules and regulations to be prescribed by the Commissioner with the approval of the Secretary and shall be separately shown in the return of the partnership.

SEC. 186. TAXES OF FOREIGN COUNTRIES AND POSSESSIONS OF UNITED STATES.

The amount of income, war-profits, and excess-profits taxes imposed by foreign countries or possessions of the United States shall be allowed as a credit against the tax of the member of a partnership to the extent provided in section 131.

SEC. 187. PARTNERSHIP RETURNS.

Every partnership shall make a return for each taxable year, stating specifically the items of its gross income and the deductions allowed by this title and such other information for the purpose of carrying out the provisions of this title as the Commissioner with the approval of the Secretary may by regulations prescribe, and shall include in the return the names and addresses of the individuals who would be entitled to share in the net income if distributed and the amount of the distributive share of each individual. The return shall be sworn to by any one of the partners.

SEC. 188. DIFFERENT TAXABLE YEARS OF PARTNER AND PARTNERSIP.

If the taxable year of a partner is different from that of the partnership, the distributive share of the net income of the partnership to be included in computing the net income of the partner for his taxable year shall be based upon the net income of the partnership for any taxable year of the partnership (whether beginning on, before, or after January 1, 1936) ending within the taxable year of the partner.

Revenue Act of 1938, c. 289, 52 Stat. 447:

SEC. 182. TAX OF PARTNERS.

In computing the net income of each partner, he shall include, whether or not distribution is made to him—

(a) As a part of his short-term capital gains or losses, his distributive share of the net short-term capital gain or loss of the partnership.

(b) As a part of his long-term capital gains or losses, his distributive share of the net long-term capital gain or loss of the partnership.

(c) His distributive share of the ordinary net income or the ordinary net loss of the partnership, computed as provided in section 183 (b).

SEC. 183. COMPUTATION OF PARTNERSHIP INCOME.

(a) *General Rule.*—The net income of the partnership shall be computed in the same manner and on the same basis as in the case of an individual, except as provided in subsections (b) and (c).

(b) *Segregation of Items.*—

(1) *Capital Gains and Losses.*—There shall be segregated the short-term capital gains and losses and the long-term capital gains and losses, and the net short-term capital gain or loss and the net long-term capital gain or loss shall be computed.

(2) *Ordinary Net Income or Loss.*—After excluding all items of either short-term or long-term capital gain or loss, there shall be computed—

(A) An ordinary net income which shall consist of the excess of the gross income over the deductions; or

(B) An ordinary net loss which shall

consist of the excess of the deductions over the gross income.

(c) *Charitable Contributions.*—In computing the net income of the partnership the so-called "charitable contribution" deduction allowed by section 23 (o) shall not be allowed; but each partner shall be considered as having made payment, within his taxable year, of his distributive portion of any contribution or gift, payment of which was made by the partnership within its taxable year, of the character which would be allowed to the partnership as a deduction under such section if this subsection had not been enacted.

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SEC. 188. DIFFERENT TAXABLE YEARS OF PARTNER AND PARTNERSHIP.

(a) *General Rule.*—If the taxable year of a partner is different from that of the partnership, the inclusions with respect to the net income of the partnership, in computing the net income of the partner for his taxable year, shall be based upon the net income of the partnership for any taxable year of the partnership (whether beginning on, before, or after January 1, 1938) ending within or with the taxable year of the partner.

(b) *Partnership Year Beginning in 1937.*—If the taxable year of the partnership begins before January 1, 1938, and the taxable year of a partner begins after December 31, 1937, the computation of the net income of the partnership, and the inclusions with respect to the partnership net income, in computing the net income of such partner, shall be made by the method provided in sections 182 and 183 of the Revenue Act of 1936 and not by the method provided in sections 182 and 183 of this Act.

Treasury Regulations 77, promulgated under the Revenue Act of 1932:

ART. 931. CAPITAL NET GAINS AND LOSSES IN THE CASE OF PARTNERSHIPS.—

Members of a partnership may, with respect to any capital net gain, elect to be taxed as provided in section 101 (a). Where the net income of a partnership consists in whole or in part of capital net gain, there shall be attached to the return (upon the request of any member) a statement showing—

(1) All items of capital gain, capital loss, and capital deductions, as provided in article 502, and

(2) The names of the members and the amounts of their respective shares in such capital net gain or capital net loss.

Treasury Regulations 94, promulgated under the Revenue Act of 1936:

ART. 181-1. PARTNERSHIPS.—Partnerships as such are not subject to taxation under the Act, but are required to make returns of income. (See sections 187 and 188.) For definition of what the term "partnership" includes, see section 1001 (a) (3).

ART. 182-1. DISTRIBUTIVE SHARE OF PARTNERS.—Individuals carrying on business in partnership are taxable upon their distributive shares of the net income of such partnership, whether distributed or not, and are required to include such distributive shares in their returns.

* * * * *

* * * If the result of partnership operations is a net loss (excess of allowable deductions over gross income), the loss will

be divisible by the partners in the same proportion as net income would have been divisible (or, if the partnership agreement provides for the division of a loss in a manner different from the division of a gain, in the manner so provided), and may be taken by the individual partners in their returns of income. * * *

ART. 183–1. COMPUTATION OF PARTNERSHIP INCOME.—The net income of the partnership shall be computed in the same manner and on the same basis as the net income of an individual. In computing the gain or loss recognized by section 112 upon the sale or exchange by a partnership of capital assets to be taken into account in computing the net income of the partnership, section 117 (a) is applicable, and the fact that a partnership net loss (excess of allowable deductions over gross income) for a taxable year beginning after December 31, 1935, may have been caused in whole or in part by taking into account certain losses sustained upon the sale or exchange of capital assets will not prevent the partner from deducting from his individual gross income his pro rata share of the partnership's net loss even though the partner individually may not have realized any gain on the sale or exchange of capital assets. * * *

ART. 184–1. CREDITS ALLOWED PARTNERS.—The credits against net income provided in section 25 are not applicable to partnerships as such. An individual partner, however, is entitled for the purpose of the normal tax to a credit against his net income, in addition to the credits allowed to him under section 25, of his proportionate share of such amounts (not in excess of the

net income of the partnership) of interest specified in section 25 (a) as are received by the partnership. There shall be included in the return of the partnership a statement of the amounts of such interest and the proportionate share thereof of each partner.

ART. 185–1. EARNED INCOME CREDIT OF PARTNERS.—For the purpose of computing the earned income credit against net income (see section 25 (a) (4) and (5)), a member of a partnership is entitled to treat a proper part of his distributive share of the partnership net income as earned income. Such part cannot exceed a reasonable allowance as compensation for personal services actually rendered by the partner in connection with the partnership business. In the case of a partnership which is engaged in a trade or business in which capital is a material income-producing factor and in the trade or business of which the partner renders personal services which are material to the earning of the partnership income, the earned income of the partner from the partnership is a reasonable allowance as compensation for the personal services actually rendered by him, but not in excess of 20 percent of his share of the net profits of the partnership (computed without deduction for so-called salaries to members). In such a case, if reasonable compensation is less than 20 percent of the partner's share of the net profits, the earned income is the full amount of the reasonable compensation, but, if reasonable compensation is more than 20 percent of the partner's share of the net profits, then the earned income is 20 percent of the partner's share of such profits.

There must be included in the return of the partnership a statement showing the names of the members and the amount (determined in accordance with the first paragraph of this article) of each partner's distributive share of the partnership net income which consists of earned income. * * *

* * * * *

ART. 187–1. PARTNERSHIP RETURNS.—Every partnership shall make a return of income, regardless of the amount of its net income (see section 1001 defining the term "partnership"). The return shall be on the form prescribed by the Commissioner, shall be filled in according to the instructions contained thereon, and shall be sworn to by one of the partners. Such return shall be made for the taxable year of the partnership, that is, for its annual accounting period (fiscal year or calendar year, as the case may be), irrespective of the taxable years of the partners. (See sections 182 and 183.) If the partnership makes any change in its accounting period, it shall make its return in accordance with the provisions of section 47.

ART. 187–2. CONTENTS OF PARTNERSHIP RETURN.—The return of a partnership shall state specifically—

(a) The items of its gross income enumerated in section 22;

(b) The deductions enumerated in sections 23 and 213;

(c) The amounts specified in section 25 (a) received by the partnership;

(d) The amount of any income, war-profits, and excess-profits taxes of the partnership paid during the taxable year to a foreign country or to any possession of the United States, and the amount of any

such taxes accrued but not paid during the taxable year;

(e) The names and addresses of the individuals who would be entitled to share in the net income of the partnership if distributed;

(f) The amount of the distributive share of such net income of each such individual;

(g) The part of such share of the net income which consists of earned income (see sections 25 (a) (4) and (5) and 185); and

(h) Such other facts as are required by the return form.

Treasury Regulations 101, promulgated under the Revenue Act of 1938:

ART. 182-1. DISTRIBUTIVE SHARE OF PARTNERS.—(a) If the taxable year of the partnership begins on or after January 1, 1938, each partner is required to include in his return for his taxable year within which or with which the taxable year of the partnership ends, whether or not distributed:

(1) As a part of his short-term capital gains or losses, his distributive share of the net short-term capital gain or loss of the partnership.

(2) As a part of his long-term capital gains or losses, his distributive share of the net long-term capital gain or loss of the partnership.

(3) His distributive share of the ordinary net income or the ordinary net loss of the partnership, computed as provided in section 183 (b).

(b) If the taxable year of the partnership begins before January 1, 1938, each partner is required to include in his return for his taxable year (even though beginning

after December 31, 1937) within which or with which the taxable year of the partnership ends, his distributive share, whether or not distributed, of the net income of the partnership as determined by the method provided in sections 182 and 183 of the Revenue Act of 1936. See section 188 of the Revenue Act of 1938.

* * * * *

ART. 183-1. COMPUTATION OF PARTNERSHIP INCOME.—The net income of the partnership shall be computed in the same manner and on the same basis as the net income of an individual, except that:

(1) The partnership is required to segregate its short-term capital gains and losses and its long-term capital gains and losses and to compute the net short-term capital gain or loss and the net long-term capital gain or loss, as the case may be. A partnership is not allowed the benefit of the net short-term capital loss carry-over provided by section 117 (e).

(2) The partnership is further required, after excluding all items of either short-term or long-term capital gain or loss, to compute (a) an ordinary net income which consists of the excess of the gross income over the deductions, or (b) an ordinary net loss which consists of the excess of the deductions over the gross income. In the computation of its ordinary net income or ordinary net loss, the partnership is denied the so-called charitable contribution deduction allowed by section 23 (o), but each partner is considered as having made payment, within his taxable year, of his distributive portion of any contribution or gift, payment of which was made by the partnership within its taxable year, of a character which would be allowed to the

partnership as a deduction if section 183 (c) had not been enacted. Payments made to a partner for services rendered and for interest on capital contributions are not deductible in computing the net income of the partnership, such payments being held to represent a division of partnership profits.

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